



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George M. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-1990

Re: Payment of Membership dues in
the National Tobacco Tax Con-
ference, International Asso-
ciation of Game, Fish and Con-
servation Commissioners, and
the National Guard Association
of the United States.

In your letter of February 18, 1940, you request our opinion as to whether payment out of state funds is authorized to be made of the following items, to wit, first, in behalf of the State Comptroller, a membership fee of \$25.00 for the year 1939 in the National Tobacco Tax Conference; second, in behalf of the Game, Fish and Oyster Commission, a membership fee of \$25.00 for the year 1940 in the International Association of Game, Fish and Conservation Commissioners; and third, in behalf of the Adjutant General, a membership fee of \$25.00 for the year 1940 in the National Guard Association of the United States.

In connection with your request for our opinion you submit to us the following facts relative to the National Tobacco Tax Conference:

"PURPOSE:

The National Tobacco Conference was organized for the purpose of bringing together the tax officials of the various States levying tobacco taxes to discuss means of better collections and enforcement.

"RESULTS:

Arrangements have been perfected at the Conference in which all the tobacco tax States exchange infor-

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nation of cigarette and tobacco shipments between the States. Texas receives monthly a transcript of all shipments of cigarettes coming into Texas from Louisiana, Mississippi, Oklahoma, Arkansas, Alabama, Arizona and Kansas, which enables the Cigarette Division to collect taxes that were heretofore escaping. This arrangement which originated and was adopted at the Conferences caused several of the States to amend their laws to provide this information. The exchange of such information has resulted in eliminating many large interstate dealers who had set up places of business in States adjoining or near Texas for the sole purpose of gaining advantage over Texas dealers by selling tax free cigarettes through interstate transactions. Such shipments were made by parcel post free of inspection under postal laws and regulations.

"SPECIFIC EXAMPLES:

In 1935 and 1936 Texas received information from Kansas and Oklahoma showing information of 52 million cigarettes shipped into Texas by one dealer operating a place of business in both states. This information was obtained through a reciprocal agreement made at National Tax Conferences and resulted in stopping the activities of this dealer as well as several others operating on a smaller scale. None of the cigarettes were tax paid until the Department received the information.

At the Conference in New Orleans in 1938 Sam Kimberlin and Pat Heff persuaded the tax officials of Mississippi to audit dealers shipping into Texas and turn the information over to the Texas officials. As a result approximately \$5,000.00 was collected in delinquent taxes after forty-four civil suits had been filed by the Attorney General's Department. Some 325 dealers and consumers were involved in the receipt of such cigarettes from Mississippi. In one case -- the Continental Can Company of Houston -- \$1,800 was collected in cigarette tax and penalties without the necessity of filing a

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civil suit. This has resulted in reducing the business of this dealer to a very small quantity which is now reported to Texas monthly by the State of Mississippi. Mississippi amended its law after the Conference in New Orleans to require dealers to report interstate shipments to the Mississippi Tax Commission and to provide that such information could be given to the States into which such shipments were made.

The Conferences have resulted in better laws in all the States levying tobacco taxes and has reduced tax evasion to a minimum through interstate transactions.

The Conference has also appointed committees to use their influence in having National legislation enacted that would permit inspection of mail shipments and closer inspection of all interstate transactions. It is expected that this bill -- the Tarver Bill -- will be enacted during the present session of the National Congress. This Bill has been sponsored and pushed by the National Tobacco Tax Conference and if it is successfully enacted, it will be as a result of the efforts of the National Tobacco Tax Conference. Successful passage will mean a saving of not less than \$100,000.00 which is still escaping through the interstate shipment of cigarettes by parcel post into Texas."

Among the items of appropriation for the operation of the Cigarette and Occupation Tax Enforcement Division of the Comptroller's Department we find an appropriation of \$10,000.00 for "Postage, telephone, telegraph, express, supplies, stationery, printing and contingent." In Section 24a of Article 7047c-1, Vernon's Civil Statutes, it is made the duty of the Comptroller to collect, supervise and enforce the collection of cigarette taxes and the Comptroller is given the power and the authority to make and to publish rules and regulations for the enforcement of the provisions of the act levying the cigarette tax and the collection of revenues thereunder. From the facts which you submit to us, there appears not only a clear desirability for the Comptroller to be a member of the National Tobacco Conference but a practical

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necessity for such membership and acquisition of the benefits thereof if he is to properly enforce the provisions of the taxing statute and effect a reasonably high percentage of collections. The problem of the shipment of unstamped cigarettes from other states into this one is one which cannot be properly dealt with except with the cooperation of the authorities of other states. In our opinion the amount of \$25.00 for membership in the National Tobacco Tax Conference may be paid out of the appropriation of \$10,000.00 mentioned above.

Among the items of appropriations for the current biennium to the Game, Fish and Oyster Commission is one of \$400.00 for "Books, periodicals, dues and subscriptions." The sum of \$25.00 covering dues for the Game, Fish and Oyster Commission for membership in the International Association of Game, Fish and Conservation Commissioners may be paid out of that appropriation.

We desire to be furnished with additional information concerning the functions of the National Guard Association and the relationship between such Association and the Adjutant General before attempting to give our opinion in response to the third part of your question.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

GRL:GO

APPROVED MAR 18, 1940

George H. Shepard
ATTORNEY GENERAL OF TEXAS

